

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION SUBCOMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **VICE CHAIRMAN ROYAL JOHNSON**, on January 30, 2001 at 12:00 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Royal Johnson, Chairman (R)
Sen. Don Ryan (D)
Sen. Tom Zook (R)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Misti Pilster, Committee Secretary
Melissa Rasmussen, Transcriber

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary: SB 243

Todd Everts informed the committee how he had split up the amendments. The grey bill coordinated with **SEN. ROYAL JOHNSON's** amendments **SB024301.ate EXHIBIT(ens24b01)**. He stated the green bill is PPL amendments **SB024305.ate EXHIBIT(ens24b02)**. He told the committee there is one set of amendments that are not reflected in a different color, but they will be discussed.

CHAIRMAN JOHNSON started with the grey bill amendments. He stated they were the result of a conversation with individuals who wanted to remove the step down at the end of the bill. The section would be removed according to his amendments. He explained that what the subcommittee does is a suggestion to the whole committee. He declared the second part of his amendments remove the transition situation, there is now a level line.

Motion: **SEN. RYAN** moved that **AMENDMENT SB024301.ATE BE ADOPTED.**

Discussion:

SEN. DON RYAN asked if the first amendment created a full load and would discourage new generation in Montana for the next seven years. **CHAIRMAN JOHNSON** stated if the price stays where it is now, people would build new generation. The amendment extends the period from a five year to a ten year period to see what is going to happen in the market. He charged he did not want to complicate matters for the customer with the least amount of choice. He stated he did not have objection from people who were off of the system and wanted to get back on.

SEN. RYAN said he was worried about locking people in, because there is not the potential for anyone who creates new generation to sell it to any of the locked up Montana Power customers under this current bill until 2007. That would inhibit people from building new generation.

CHAIRMAN JOHNSON stated if someone wanted to build a new generator or a company wants to move in, their option is to buy power wherever it is. If it is less than the power people buy in a forward contract already, there would be a lot of people who might be interested in building in the state.

Pat Corcoran, Montana Power Company, argued not providing a continued opportunity for competition would perpetuate the problem until 2007. He said since 2002 power suppliers have not been able to compete against price, but they have had load opportunity. Companies will be able to compete against price, but they will not have customers to compete for.

CHAIRMAN JOHNSON asked if a large company was in need of a lot of production did it require that they buy the power from a default supplier. **Mr. Corcoran** said that was correct for large suppliers, but they have a lot of interest in school districts and cities, etc. They would be prevented from that type of activity.

CHAIRMAN JOHNSON stated if they want a choice they have it now.

SEN. RYAN stated that people had contacted him about a "buying cooperative". He argued by locking things up the work that had been done would be wiped out until 2007 unless they find new customers.

CHAIRMAN JOHNSON proclaimed that is correct. He stated in the last two years they had not made an application to be a licensed default supplier in the state.

SEN. TOM ZOOK declared if anyone thinks about building generation facilities they are not building them for Montana customers. The market in Montana is fairly limited.

Vote: motion **carried 3-0.**

CHAIRMAN JOHNSON opened discussion on the green bill, **SB024305.ate.**

Mr. Everts explained that with the passage of the grey bill the following amendments are obsolete: 1, 3, 4, 5, 10, 11

Motion: **SEN. ZOOK** moved that **AMENDMENT 2 OF SB024305.ATE BE ADOPTED.**

Discussion:

Ken Morrision, PPL, stated that number 2 adds the word "monthly" to make sure that the default supplier had an indication from the customer, who was opting into the program, an idea of their load on a monthly basis.

Vote: Motion **carried unanimously.**

SEN. RYAN asked if the committee could revisit number 3 of the green bill. He stated that the 2% and 5% are a very minimal amount of the load that would come off, but it does allow opportunity for small customers to look for alternative sources without having a great amount of impact on the overall load.

Motion: **SEN. RYAN** moved **REINSERT NUMBER 3 OF SB024305.ATE.**

Discussion:

Mr. Everts informed the committee by passing the first set of amendments they made number 3 obsolete. The committee would have to revisit the first set of amendments before they could address number 3. Passing the first set of amendments precludes the committee from being able to insert this amendment into the bill.

SEN. RYAN withdrew his motion.

Motion: **SEN. ZOOK** moved that **AMENDMENT 6 OF SB024305.ATE BE ADOPTED.**

Discussion:

Mr. Morrison declared that the amendment was a clarification. It was there understanding that the bill would create one rate for all customers. They saw the word "rates" and thought it needed to be changed to "rate".

CHAIRMAN JOHNSON declared that there could be a multiple rate set-up. He suggested leaving it the way it is.

SEN. ZOOK argued to keep the motion. The language could be changed later if necessary.

Vote: 2-1 Senator Johnson voting no. Motion carried

Motion: SEN. ZOOK moved that AMENDMENT 7 OF SB024305.ATE BE ADOPTED.

Discussion:

Mr. Morrison deferred the explanation to **Jerome Anderson, PPL.**

Mr. Anderson stated that the bill would allow an emergency supplier of electricity to provide services to customers who have chosen an electrical supplier in the beginning. There is nothing in the bill to define an emergency situation. The amendment suggested the definition of an emergency and what the person would have to do in order to get in. It also defines the maximum amount of time a person can stay in.

Mr. Corcoran stated MPC had additional amendments to compliment the suggested amendment.

Mr. Everts declared if the PPL amendments pass, the committee would have to wait for analysis to figure out a way to make them work together.

SEN. ZOOK asked if MPC could explain where their amendments dealt with the emergency situation.

Mr. Corcoran charged that the PPL language could be added to the suggested language by MPC.

SEN. RYAN asked if MPC had a problem with the 60 day time frame in dealing with an emergency situation. **Mr. Corcoran** stated they did not have a problem with that time frame. A requirement would be placed on customers.

SEN. RYAN clarified that the 60 days was added so someone could not come into the system and stay there, adding an additional cost to the customers throughout the system.

Mr. Anderson offered that the definition of emergency is important. Without a standard in the bill, it creates a situation where the default supplier can declare an emergency and let somebody on or off at will.

Vote:2-1 Senator Johnson voting no. Motion carried

Mr. Morrison explained that amendment 8 of **SB024305.ate** strikes unnecessary language. They felt the issues were covered adequately in section 9.

{Tape : 1; Side : B}

SEN. RYAN asked why **CHAIRMAN. JOHNSON** left that language in. **CHAIRMAN. JOHNSON** declared that the language is addressed in other parts of the bill, it is unnecessary.

Motion/Vote: SEN. ZOOK moved that **AMENDMENT 8 OF SB024305.ATE BE ADOPTED. Motion carried unanimously.**

Motion: SEN. ZOOK moved that **AMENDMENT 9 OF SB024305.ATE BE ADOPTED.**

Discussion:

Mr. Morrison stated on page 14 of the green bill line 20 the amendment removes the words "cost base" and insert the words "market base". It deals with the default supplier contracting with a supply affiliate or unregulated division for power supplies. They felt it needed to be a market based contract.

Mr. Corcoran declared that MPC agreed with the change.

CHAIRMAN JOHNSON asked how MPC viewed the supply affiliate or unregulated division. He asked if MPC still had a supply affiliate except for Mill Town. **Mr. Corcoran** professed he was correct. The large portion of their generation was sold. Some of their entities are grey as to whether or not they are regulated. The output is used to serve default suppliers.

SEN. ZOOK asked why he would not be in favor of the amendment.

Mr. Corcoran stated the language was included in the original SB 390. It anticipated that MPC would continue to own power generation, at the time the two year extension was a possibility.

SEN. ZOOK asked if the original bill would have tied their hands. **Mr. Corcoran** conceded that the bill provided that option. **SEN. ZOOK** asked what difference it made whether MPC is supplying power under the contract or legislation that is being enforced. Why wouldn't a market based situation be favored. **Mr. Corcoran** said the amendment clarifies specifically that they can operate in the market.

SEN. RYAN questioned if they had to pay the contracted price on qualified facility and it was above market price, could they recover the difference. **Mr. Corcoran** clarified that his reference to the qualified facility is how they are treated today. QF's are separate from the default supply situation.

Vote: 2-1 Senator Johnson voting no. Motion carried

Motion: SEN. ZOOK moved that AMENDMENT 12 & 13 OF SB024305.ATE BE ADOPTED.

Discussion:

Mr. Morrison said the amendment would strike July 1, 2002 and insert September 1, 2001. They were concerned about the date because as of June 30, 2002 PPL will have a large amount of power that they did not have a customer for. He expressed concern about waiting until the last minute and not getting a competitive bid. They would like to ensure that the bids go out in a reasonable amount of time. He stated that following "contract" they put in a reference to a competitive bid process, so when the default supplier goes out to acquire a buyer they do that within a competitive bid process. On line 29 they added "base load supply of electricity".

CHAIRMAN JOHNSON stated reasonable minimum need is in amendment 12.

SEN. JOHNSON questioned PPL waiting until 2002 and having an excess power supply. He questioned if PPL could sell their base load outside of Montana. **Mr. Morrison** said the President of PPL would like to sell the power in Montana.

Mr. Corcoran stated that MPC intends to go with the competitive full market price. The opportunity to do that is dependent upon market prices. They would go for the bids well in advance of September 1, 2001. It's possible that they may not have locked up the requirements for a base load as discussed in the section by the spring of 2001. He argued September 1, 2001 does not provide the window of opportunity needed.

CHAIRMAN JOHNSON stated in earlier conversations MPC stated they would like to do the contract right away. **Mr. Corcoran** said that was correct. They will pursue the competitive bid as quickly as possible. **CHAIRMAN JOHNSON** asked if MPC is offered a contract by the supplier they would have a contract to know where they are going. How it is structured is up to MPC and the supplier. If they continue with this program they will have no idea where they are going. **Mr. Corcoran** clarified that his comments are made within a portfolio approach. **CHAIRMAN JOHNSON** asked them to concede to a price.

SEN. RYAN asked if the words "base load," and, "minimal need," referred to half of what the total supply may be or is it demand. **CHAIRMAN JOHNSON** stated if a contract is made, they are contracting to receive supply similar to what is being done.

SEN. ZOOK withdrew his motion.

Meeting started again at 4:55 pm

CHAIRMAN JOHNSON stated that the Public Service Commission had named a default supplier.

SEN. ZOOK asked if amendment 12 of **SB024305.ate** had to do with naming a default supplier.

Mr. Morrison provided the same explanation as before for amendment 12.

Dennis Lopach, Northwestern Corporation, distributed a chart that deals with wholesale electricity prices **EXHIBIT (ens24b03)**. They are approaching the peak period. He stated that they do not want to lock in any sooner than they have to. They have concerns about locking into the five year period. He stated the chart gives actual quotes that have been obtained per kilowatt-hour by Northwestern.

Mr. Anderson asked who gave the quotes. **Mr. Lopach** said Northwest suppliers provided the information. **Mr. Anderson** asked when the quotes were taken. **Mr. Lopach** informed him it was last week.

CHAIRMAN JOHNSON questioned if the quote was saying they should wait until 2006 to buy the power. **Mr. Lopach** clarified that the chart tells them not to walk in too soon or for too long.

CHAIRMAN JOHNSON asked since the suppliers are the people giving the bid at what level would that be too high. **Mr. Lopach** said the last block shows the current vote for a five year contract.

Within the next three weeks it would be very similar. They desire shorter term contracts which allow them the flexibility to fill in at lower prices. **CHAIRMAN JOHNSON** asked how a level price throughout the five year period would be achieved. **Mr. Lopach** said that would be addressed when they discussed section 9 of the bill. He stated there will always be a variation. The only alternative is to do a requirements contract which is very expensive.

SEN. RYAN questioned how you can identify power supply in 2007. He asked if it would be possible to only purchase a portion of the base load by September 1. **CHAIRMAN JOHNSON** replied yes. However, if the guess is wrong what will people pay for power during those times.

SEN. ZOOK questioned if Northwestern had the opportunity to purchase power previous to a contract date they would base their price on a projected cost.

{Tape : 2; Side : A}

Mr. Lopach declared that at this point they are managing the cost to the customer. He stated that the market needs to be open ended. The power will be from a mix of sources on June 30. They would want the more expensive sources to be terminated by 2003 so they could purchase a cheaper power supply.

Mr. Corcoran exclaimed that the portfolio approach speaks to the flexibility that **Mr. Lopach** had been speaking of. He stated they expect to go off of the competitive bids once the flexibility is in place. The bids would be measured by both price and volume against time.

SEN. ZOOK asked at what point would MPC sign a contract with the state. **Mr. Corcoran** declared that the original language requires the default supplier to conserve a sufficient power supply to all of its customers by July 1, 2002. He stated that is an obligation that they will assume full responsibility for. A full requirements contract exists will PPL. He gave examples of bidding on contracts.

Mr. Anderson stated that the suggested language does not prevent a specific number of contracts that a company default supplier can purchase. It provides a competitive bid process. He stated the people who are the suppliers should have reasonable notice.

SEN. RYAN said it all depended upon the magic of the date selected.

CHAIRMAN JOHNSON declared if the prices are used on the chart, what would be the best time to purchase. **Mr. Lopach** said it depends on the approach used. He argued the current prices are still being affected by various CP. **CHAIRMAN JOHNSON** said right now is the lowest time according to the chart. **Mr. Lopach** declared the point is not to take a five year contract. **CHAIRMAN JOHNSON** questioned how that was ascertained according to the chart. **Mr. Lopach** argued it is the way it steps down in the lower years. **CHAIRMAN JOHNSON** charged according to the chart it is low. He argued that they should lock in a contract now using the low rates. **Mr. Corcoran** declared the five year bid enclosed the reflection of what power suppliers expect to happen with the market during the five year time period. He charged the price is higher automatically because it crosses over this period of time. **CHAIRMAN JOHNSON** said they would start delivering the power at a different time. **Mr. Corcoran** said if they deliver a bid on January of 2004 the bid on average would be less than the 6.2 cents because it is looking at a market price that assumes a different widow of total cost. They want flexibility. He stated depending on the market at the time, that would determine the cost of the power.

SEN. RYAN stated that currently the PSC has extended to 2004. He stated that no matter what happens there will still be a guaranteed price for another two years. According to the chart there are changes coming in 2003 and 2004. He questioned suffering for two years of high prices or factoring those high prices into the first two years and keeping the five year contract.

Mr. Anderson declared that the chart indicated a significant price change. The amount given on the chart is an estimation. He warned waiting could present a problem for everybody.

Motion/Vote: **SEN. RYAN** moved that **AMENDMENT 12 OF SB024305.ATE BE ADOPTED. Vote 2-1 Senator Johnson voting no. Motion carried**

Mr. Morrison stated that amendment 13 of **SB024305.ate** talks about the bidding above or below the reasonable base load.

CHAIRMAN JOHNSON asked if the amendment would unfirm the price. Who will pay if the price goes up. **Mr. Morrison** said that it is covered under amendment 12. The default supplier would have the ability to go out and contract a load. **CHAIRMAN JOHNSON** asked who pays if it is above the base load. **Mr. Morrison** said the consumer would pay for the base load. **CHAIRMAN JOHNSON** wondered if it would be a firm contract for the five year period. **Mr.**

Morrison stated under the amendment they would have the flexibility to work with different terms. **CHAIRMAN JOHNSON** said that would not give a firm five year contract. **CHAIRMAN JOHNSON** questioned what megawatts were being discussed. **Mr. Morrison** said the base load was defined as the electricity needed to meet the reasonably expected minimal needs of the customers for the period July 1, 2002-June 30, 2007.

CHAIRMAN JOHNSON asked what is the base load and reasonable expected minimal need. **Mr. Corcoran** stated it was difficult to answer the question because of the competitive bid process. It depends upon the prices you can get for the base load. **CHAIRMAN JOHNSON** asked if he had in his records what the load would have been in the last year. **Mr. Corcoran** declared the current load is between 700-800 megawatts of power. **CHAIRMAN JOHNSON** clarified if a base load would be half of that. **Mr. Corcoran** said he could not suggest that it would be half. He would need to know what customers represent base load in the five year contract. With the industrial customers it would go up.

Mr. Anderson stated that the point in time when the default supplier prepares to take the bid, they may have a new chart that would show the five year base load would be a better bid at a different time.

Motion: SEN. RYAN moved that **AMENDMENT 13 OF SB024305.ATE BE ADOPTED.**

Discussion:

SEN. ZOOK asked what title 69-8403 was. **Mr. Everts** said it was the rate change language. That section had already been stricken.

Mr. Corcoran declared that they still prefer their existing language.

Mr. Lopach exclaimed that they had problems with the language.

SEN. ZOOK asked if it would be a level line for five years.

CHAIRMAN JOHNSON stated that there was a recommendation to change that language.

Mr. Everts declared that amendment 12 adjusts the language to meet the needs of the customers.

{Tape : 2; Side : B}

CHAIRMAN JOHNSON asked if the companies had discussed their situations with the other members of the committee.

They informed him they had not met with everyone.

ADJOURNMENT

Adjournment: 1:40 P.M.

SEN. Royal Johnson, Chairman

MISTI PILSTER, Secretary

MC/MP

EXHIBIT (ens24bad)